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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

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In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor

Case No.: BK-S-06-10725 LBR  
 Case No.: BK-S-06-10726 LBR  
 Case No.: BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor

Chapter: 11  
 Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

**MOTION FOR RELIEF FROM THE  
 AUTOMATIC STAY TO PERMIT  
 3800 PRINCE STREET, LLC TO  
 ADJUDICATE CLAIMS IN STATE  
 COURT BY 3800 PRINCE STREET,  
 LLC**

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 LLC,

Debtor

Hearing Date: April 29, 2009  
 Hearing Time: 1:30 p.m.  
 Courtroom: 1

In re;

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor

Affects:

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC

COME NOW, Movant 3800 Prince Street, LLC, a New Mexico Limited Liability Company, by and through its counsel, Edgar C. Smith, Esq., and move the court for an order permitting relief from the automatic stay under 11 USC §362(d)(1) to allow Movant to pursue third party claims against USA Commercial Mortgage Company in pending civil litigation in the Second Judicial District Court in Bernalillo County, New Mexico.

This motion is based upon the accompanying notice, the memorandum of points and authorities attached hereto, the 362 information sheet attached as Exhibit A, such matters as may be judicially noticed, and on further evidence as presented at the time of the hearing on this matter.

Dated: March 30, 2009

LAW OFFICE OF EDGAR C. SMITH

By: /s/ Edgar C. Smith  
 Edgar C. Smith, Esq.  
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 Las Vegas, Nevada 89128  
 Attorney for Movant 3800 Prince Street, LLC

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Movant 3800 Prince Street, LLC, a New Mexico Limited Liability Company, moves the court for an order granting relief from stay to permit Movant to assert quiet title claims against various parties, including USA Commercial Mortgage Company, in a pending case filed in the Second Judicial District Court, Bernalillo County, New Mexico, case # CV 2007 07979 (“Civil Action.”).

Movant is the owner of a portion of the property at issue in the Civil Action.<sup>1</sup>

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<sup>1</sup> The property is improved commercial property legally described as:  
 Tract C-1-A-1-B, SCHWARTZMAN INDUSTRIAL CENTER, within Sections 5 and 8, Township 9 North, Range 3 East, N.M.P.M., Bernalillo County, New Mexico, as the same are shown and designated on the replat filed on the office of the County clerk of Bernalillo County, New Mexico, on July 1, 2004 in Book 2004C, page 200.

1 A copy of the Movant's deed is attached as Exhibit B.

2 Title to the parcel was encumbered with one or more deeds of trust when Movant  
3 acquired the parcel. Those security interests are the subject of the Civil Action.

4 A loan servicer, initially Compass Financial and now Platinum Properties, filed a  
5 foreclosure action on a deed of trust encumbering the parcel. Movant had previously purchased  
6 a portion of the parcel from SVRB Investments, LLC in March 2006 and had paid the necessary  
7 amount for a partial release of the trust deed to USA Commercial Mortgage.

8 Movant has been named as a defendant in the Civil Action and has filed a counterclaim  
9 seeking declaratory relief and a decree quieting title as to its parcel. USA Commercial  
10 Mortgage has been joined because, in addition to being the original loan servicer, USA  
11 Commercial Mortgage appeared on an exhibit to the trust deed as having an interest in the loan.  
12 When the lender and borrower SVRB Investments, LLC filed an amendment to the deed of trust,  
13 USA Commercial Mortgage's interest no longer appeared. Its interest was apparently replaced  
14 by USA Commercial Real Estate Group ("USA CRE") who later assigned its interest to  
15 Platinum Properties. There was no formal assignment of the interest of USA Commercial  
16 Mortgage in the deed of trust, so they are a necessary party to the Movant's claim for  
17 declaratory relief and a decree of quiet title.

## 18 **II. FACT BACKGROUND**

19 Movant was not a party to the underlying loan transaction, but is informed and believes  
20 that SVRB Investments, LLC entered into a loan agreement in April 2005. The loan transaction  
21 was apparently handled by USA Commercial Mortgage Company, a Nevada corporation ("USA  
22 Commercial Mortgage.") Various private investors pooled their money to make the loan to  
23 SVRB Investments, LLC, including USA Commercial Mortgage. Repayment of the loan was  
24 secured by two trust deeds which were recorded in the Real Estate Records of Bernalillo  
25 County, New Mexico.<sup>2</sup>

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28 <sup>2</sup> A copy of the relevant recorded trust deed is attached as Exhibit C.

1 The trust deed was amended and the amendment recorded August 26, 2005. USA  
2 Commercial Mortgage is no longer identified as a beneficiary under the second trust deed.  
3 Instead, "USA Commercial Real Estate Group" ("USA CRE") is identified as such, for having  
4 contributed \$225,000.00 to the pool of funds lent to the borrower.<sup>3</sup> Another amendment was  
5 recorded on January 19, 2006. USA CRE, not USA Commercial Mortgage, appears as one of  
6 the beneficiaries.<sup>4</sup>

7 USA CRE later assigned its interest as Beneficiary which was duly recorded in the Real  
8 Estate Records of Bernalillo County, New Mexico. There is no record that USA Commercial  
9 Mortgage ever assigned its interest in the deed of trust.

10 Movant purchased a portion of the encumbered parcel in March 2006 from SVRB  
11 Investments, LLC. Movant is informed and believes that escrow tendered to USA Commercial  
12 Mortgage the amount necessary to obtain a partial reconveyance of the deed of trust. However,  
13 no partial reconveyance was recorded.

14 The borrower, SVRB Investments, LLC commenced suit against Compass Financial  
15 Partners, LLC ("Compass") in Bernalillo County, New Mexico, alleging slander of title  
16 concerning encumbrances against the title. Compass, in turn, filed a counterclaim for  
17 foreclosure of the two trust deeds and to enforce a personal guaranty, and a third party complaint  
18 against Movant for declaratory relief. Platinum Properties 2, LLC was substituted into the case  
19 as the counterclaimant and the third party plaintiff. Platinum seeks a declaration that Movant's  
20 title and its lender's trust deed are subordinate to Compass' trust deeds, and that foreclosure will  
21 eliminate the interest of Movant and its lender in the title to the property. Movant disputes  
22 Platinum's claims, and further contends that the trust deed no longer encumbers title. Movant  
23 seeks to assert a decree of quiet title barring USA Commercial Mortgage, Compass, and  
24 Platinum from foreclosing or asserting any lien adverse to that of the Movant, and declaratory  
25 relief to the same effect.

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28 <sup>3</sup> A copy of the "First Amendment to Deed of Trust" is submitted as Exhibit D. The referenced recital is on page  
2.

<sup>4</sup> A copy of the Second Amendment to Deed of Trust is submitted as Exhibit E.

### 1                   **III.     RELEVANT PROCEDURAL HISTORY IN THIS PROCEEDING**

2                   Movant is informed and believes that Compass succeeded to the rights of USA  
3 Commercial Mortgage as loan servicer for various loans, including the loan made to SVRB  
4 Investments, LLC. On April 4, 2008, the Hon. Robert C. Jones issued an order that authorized  
5 Compass USA SPE LLC and Compass Financial Partners, LLC to assign their servicing rights  
6 to Platinum Properties 2, LLC (“Platinum Properties”) in “3685 *San Fernando Lenders, LLC, et*  
7 *al., Plaintiffs v. Compass USA SPE LLC, et al., Defendants,*” U.S.D.C. Case No. 2:07-CV-  
8 00892-RCJ-GWF-BASE.

9                   Cause exists to grant relief under 11 USC §362(d)(1) and (d)(2) for the reasons set forth  
10 below.

### 11   **II.     ARGUMENT**

#### 12                   **A. MOVANT, AS A PARTY IN INTEREST, SHOULD BE GRANTED RELIEF** 13 **FROM THE AUTOMATIC STAY TO LITIGATE TITLE ISSUES IN ANOTHER** 14 **FORUM.**

15                   11 USC §362(d) permits relief from the automatic stay to be granted in appropriate  
16 instances to a “party in interest.” Relief has been granted where the court finds that an action  
17 pending in another tribunal is not connected and will not interfere with the pending bankruptcy  
18 case, and where granting relief will not violate the purpose and policy of the automatic stay. *See*  
19 *In re Holtkamp*, 669 F.2d 505, 508-09 (7<sup>th</sup>. Cir. 1982).

20                   In *In re Holtkamp, supra*, the Seventh Circuit affirmed a district court’s order granting  
21 relief from stay to permit a pending suit to go forward to determine the debtor’s alleged liability,  
22 reasoning:

23                   While we agree that Congress intended that the automatic stay have broad application,  
24 the legislative history to § 362 clearly indicates that Congress recognized that the stay  
25 should be lifted in appropriate circumstances. It states: It will often be more appropriate  
26 to permit proceedings to continue in their place of origin, when no great prejudice to the  
27 bankruptcy estate would result, in order to leave the parties to their chosen forum and to  
28 relieve the bankruptcy court from many duties that may be handled elsewhere. *In re*



1 District Court, New Mexico to adjudicate the claims to title to the subject property. Movant  
2 further requests this relief be granted *nunc pro tunc* to the date of filing of the amended  
3 counterclaim and third party complaint, October 8, 2008.

4 Dated: March 30, 2009

LAW OFFICE OF EDGAR C. SMITH

5  
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13 LLC, A New Mexico Limited Liability  
14 Company  
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